Unitil
Unitil Service Corp.

November 30, 2004

BY HAND-DELIVERY

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Investigation by the Department of Telecommunications and Energy on its own motion regarding circumstances under which an electric company must seek Department approval pursuant to G.L. c. 164, § 72 prior to transmission line construction or alteration. D.T.E. 04-92

Dear Secretary Cottrell:

Enclosed for filing in the above-referenced docket on behalf of Fitchburg Gas and Electric Light Company d/b/a Unitil, please find the original and ten (10) copies of the company's comments.

Thank you for your attention to this matter.

Sincerely,

Gary Epler

Enclosure

cc: Joseph Rogers, Assistant Attorney General

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Request A.1:

Does the language of G.L. c. 164, § 72 ("Section 72") encompass all types of transmission lines that a transmission provider might construct, or are certain types of lines (for example, substation tap lines) excluded from this definition? Please explain.

Response:

Unitil submits that, at a minimum, the following types of lines should not be considered to fall within the definition of "transmission lines" of Section 72:

1) Substation taps: Substation taps are generally very short lines connecting the substation to the transmission system and should be considered part of the substation construction.
2) Transmission line taps to a single customer constructed for the sole purpose of serving that customer should be excluded from Section 72. The customer generally contributes to the cost of the project, so an overall prudence review is not warranted. Local environmental and zoning requirements will be met through the permitting process.
3) Transmission line and easement relocation on a customer's property undertaken at the request of the customer. The previous determination that the line is required and being used as intended would not be affected by such a project. Under this circumstance, the customer requesting the relocation would pay the expense of creating the new easement, relocating the line and releasing the existing easement.

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Request A.2:

Section 72 appears to distinguish between "a line for the transmission of electricity" and other electric lines. Are the Department's two orders distinguishing transmission and distribution facilities in response to FERC Order 888 (Classification of Transmission and Distribution Facilities, D.T.E. 97-93 (1998), and Western Massachusetts Electric Company, D.T.E. 03-71 (2004)) relevant to the question of which electric lines are subject to Section 72? Can you propose a clear formula that would distinguish transmission lines subject to Section 72 from distribution lines that would not be subject to Section 72?

Response:

Unitil notes that the definition of "transmission facility" at G.L. c. 164 § 1 recognizes and incorporates the determinations made by FERC for such plant or equipment. Thus, the Department's orders in response to FERC Order No. 888 and which interpret and apply the FERC's seven-indicator test are relevant to the question of the definition of "transmission lines." Unitil applied the seven-indicator test in its March 3, 1997 filing in docket DTE 97-44, Rate Unbundling and Compliance Filing, which reclassified its transmission and distribution facilities. The reclassification of facilities pursuant to these orders, as well as the statutory definitions of "transmission" and "transmission facilities," should be employed by the Department as a starting point for its analysis of which transmission lines should be subject to Section 72.

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Request A.3

From a policy perspective, are there voltage, length or other considerations that should dictate when a Section 72 filing is required? If so, please explain.

Response:

Generally, Unitil believes that transmission projects which do not implicate "substantial, potentially dangerous, and costly transmission lines and structures which may be seriously damaging to communities in the Commonwealth through which the lines pass," (Boston Edison Company v. Town of Sudbury, 253 N.E.2d 850 at 858) should be provided waivers or exemptions from Section 72 filing requirements. Under such an analysis, Unitil believes that the Department should determine to provide exemptions or waivers from Section 72 filing requirements for projects within certain voltages, lengths and other factors. Section 72 filings should be required for transmission lines, as defined by the FERC seven-indicator test, which are of new construction or of existing construction that have been altered or substantially changed. The terms "altered" and "substantially changed" should be further defined to provide for a minimum threshold, such as a 20 percent increase in line capacity.

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Request A.4:

Could the Department exempt certain types or lengths of electric transmission lines from Section 72 review, while retaining the ability to authorize the taking of property by eminent domain for a certain line of that type or length, if necessary? If so, please explain.

Response:

Yes. As provided in Unitil's response to Request C.2, below, Unitil interprets the Massachusetts's Supreme Court's holding in BECo to allow for a "rule of reason approach" to the filing requirements of Section 72 where either the taking of property by eminent domain or considerations of substantial size, cost, danger and community impact are not implicated. Unitil believes that the Department has the discretion under Section 72 to establish a basis for waivers or exemptions from the filing requirements or to establish less onerous filing requirements in such circumstances.

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Request A.5(a):

For transmission providers: What factors do you consider when deciding whether to seek Section 72 approval for a new transmission line? Why do you consider these factors? Have these factors changed over time, or have you historically relied on these factors in deciding whether to seek Section 72 approval of new transmission projects?

Response:

Unitil does not have an historical reference for filing a Section 72 in the recent past. The company would consider whether there are eminent domain issues, or whether the project is of substantial size, cost, is dangerous or has a substantial community impact. Another consideration is whether an alternative to the eminent domain related project exists, or is economically feasible.

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Request A.5(b):

For transmission providers: What voltage levels are used in your service territory: (a) for the transmission of electricity for distribution in some definite area; (b) for supplying electricity to yourself or to another electric company or to a municipal lighting plant for distribution and sale; and (c) for transmission of electricity to a railroad, street railway or electric railroad, for the purpose of operating it? Are there instances in which any of the same voltage levels also are used for lines in your service territory that are clearly distribution circuits only?

Response:

a) The transmission voltages used in the Unitil territory are 115kV and 69kV.
b) See response to (a), above.
c) Unitil does not use transmission facilities for operation of railroad, street railway or electric railroad. Unitil does operate 69kV transmission and distribution lines as stated in its Docket No. 97-44 Rate Unbundling Filing.

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Request A.6:

For transmission providers with recent experience in Section 72 reviews: Please provide an estimate of the incremental expenses incurred when a transmission project requires a Section 72 review.

Response:

Unitil does not have any recent experience with Section 72 filings.

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Request B.1:

Should the language in Section 72 be read as requiring companies to seek Section 72 approval for alterations to certain transmission lines, where eminent domain is not required for such alterations? If so, what types of alterations might require Section 72 approval, and what types should be considered routine maintenance, not requiring such approval?

Response:

No, not for all alterations. Please see the responses to Requests A.3, A.4 and C.2.

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Request B.2:

For transmission providers: Have you ever sought Section 72 approval for alterations to an existing transmission line, except in the context of an eminent domain filing? If so, please provide recent examples. What factors do you consider when deciding whether to seek such approval? Why do you consider these factors? Are there other factors you think should be considered, going forward?

Response:

Unitil does not have any recent experience with Section 72 filings.

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Request B.3:

For transmission providers: Approximately how many additional Section 72 filings would you make annually if Section 72 approval were required for all reconductoring of electric transmission lines? For reconductoring that required the replacement or relocations of a significant number of poles? For the relocation of a transmission line outside of the existing right-of-way?

Response:

Unitil does not have any recent experience in reconductoring or relocating transmission lines. The immediate future impact of such a change would be minimal. Unitil primarily completes maintenance and repair of existing transmission lines. The impact of any of these changes would create the need for Unitil to typically file no more than one (1) Section 72 filing in any year.

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Request C.1:

Attached to this Request for Comments is a draft checklist, similar to the checklist used for zoning exemptions, which outlines the information that should be submitted as part of a Section 72 filing. Does the checklist accurately convey the scope of current Department proceedings with respect to Section 72 reviews? If not, what should be changed to accurately convey that scope? Would you recommend any changes to the current scope of the Section 72 review?

Response:

Unitil does not have recent experience with Section 72 filings before the Department. However, Unitil suggests that the following changes would make the draft filing guideline more flexible and help to expedite the review process.

Part 2 Box 4: Unitil recommends rewording the environmental impact portion of this filing to read "A copy of any analysis or report filed by the company with any other local, state, or federal regulatory agency or oversight body concerning environmental or other impacts of the transmission line". Allowing the filing of such existing reports, rather than requiring a new analysis, would prevent duplication of the work that is required under local conservation committee, MEPA (EIR and ENF) or EPA review. Duplication of review may tend to lengthen the review and approval process.

Part 2 Box 5: Unitil recommends rewording this section to "A list of all permits *anticipated to be* required for construction of the transmission line." All of the required permits may not be known at the time of the filing.

Part 3 Box 3: See response for Part 2 Box 4. The attachments for this section would be a copy of analyses or reports filed by the company with any other local, state or federal agency or oversight board. Typical attachments for this section would be Environmental Notification Form (ENF), Environmental Impact Report (EIR), conservation committee filings, etc.

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Request C.2:

As discussed above, there have been differences of opinion in the past as to whether G.L. c. 164 § 72 requires that a company seek Department approval to construct any new transmission line, or whether the Department's approval is necessary only when an eminent domain taking is necessary for such construction. Given the Court's holding in Sudbury and BECo, and the amendments to G.L. c. 164 § 72 adopted as part of Chapter 249 of the Acts of 2004, is it still possible to argue that Department approval should be required only when an eminent domain taking is necessary for the construction of a transmission line? If so, please explain.

Response:

Unitil interprets the Massachusetts Supreme Court's holding in BECo to require a company to seek Department approval pursuant to a Section 72 filing with respect to proposals requiring the exercise of eminent domain as well as "proposals to build substantial, potentially dangerous, and costly transmission lines and structures which may be seriously damaging to communities in the Commonwealth through which the lines pass." BECo, 253 N.E.2d 850 at 858. In other words, as the Court's opinion explicitly recognized that it was reasonable to conclude that filings outside the context of eminent domain proceedings should be required for "substantial" projects, it would appear equally reasonable to assume that the Section 72 filing requirement is subject to a "rule of reason" allowing the Department discretion to employ its expertise to provide for waivers or exemptions where the transmission project does not implicate such substantial concerns.